

MUST News

Department of Environmental Quality

Winter Issue 2004



This historic building at 1100 North Last Chance Gulch, corner of Last Chance Gulch and Lyndale Avenue in Helena, provides new office space for the DEQ Remediation Division and the staff of the Petroleum Tank Release Compensation Board. The building also houses the Air, Energy and Pollution Prevention Bureau of the DEQ's Planning, Prevention and Assistance Division. See map on page 7.

Remediation Division offices moved and reorganized

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The Montana Department of Environmental Quality's Remediation Division has relocated its Helena offices to 1100 North Last Chance Gulch, the former Montana National Guard Armory at the corner of Last Chance Gulch and Lyndale Avenue. For the past seven years, the division has been housed on Phoenix Avenue on the eastern outskirts of Helena.

New telephone numbers have been assigned to the division. A complete directory is available on the DEQ Web site: <http://www.deq.state.mt.us/staffdir.asp>. Mailing addresses remain unchanged: P. O. Box 200901, Helena, MT 59620-0901.

The 2003 Legislature made the Petroleum Tank Release Compensation Board a stand-alone agency with its executive director and staff also relocated to the Armory.

The DEQ also has reorganized and renamed some bureaus, including the Remediation Division's former Environmental Services Section which inspects and licenses underground petroleum storage tank installations and removals. It is now the Underground Storage Tank Section within DEQ's Permitting and Compliance Division and has relocated to the Metcalf Building in the Capitol Complex.

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1100 North Last Chance Gulch • P. O. Box 200901
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Remediation Division offices moved and reorganized - *continued from page 1*

The complete, new address for the Underground Storage Tank Section is: 1520 East Sixth Avenue, Helena, MT, Phone (406) 444-5300, Fax (406) 444-1374.

If you have any questions on this, or any UST matter, you can contact ESS by phone at (406) 444-5300 or by e-mail at ustprogram@state.mt.us.

Audit recommendations made to DEQ

The Legislative Audit Division has completed its 2003 performance review of DEQ tank programs in general and of remediation and reimbursement specifically. Several recommendations were made for program changes.

DEQ recommendations are summarized below and PTRC Board recommendations are summarized elsewhere in this newsletter.

The full audit report was shared with the Legislative Audit Committee and will be available on the legislative Web site: <http://leg.state.mt.us/css/audit/reports.asp>. Hard copy is available by calling the Audit Division at 406-444-3122 and asking for a copy of the Petroleum Tank Release Compensation (PTRC) Fund Performance Audit, dated November 2003.

The department concurred with the auditors' recommendations and has already completed implementation of some recommendations. Implementation of other recommendations will be ongoing for the next several months. To the extent that PTRC Board and department recommendations overlap, the department has offered its full support to the board for implementation.

Reorganization

The most visible, but hopefully seamless, change resulting from the audit is the reorganization of the tank permitting, inspection, and licensing programs into the Permitting and Compliance Division of DEQ. You all should have directly received information regarding the change. However, if you missed it, information is also on the DEQ Web site at <http://www.deq.state.mt.us/index.asp>. In addition, new phone numbers are included elsewhere in this newsletter. To be fair, many of the new phone numbers do not



result from the reorganization, but from the move of the Remediation Division and Petro Board staff to offices at 1100 North Last Chance Gulch, Helena. This too is described elsewhere in this issue of MUST News.

Separate Roles

House Bill 368 was the first step in implementing auditors' recommendation that clear separation of remediation and reimbursement roles be implemented. Thus, unless requested by the Petro Board on a site-specific basis, the department will have no input into cost review and approval for claims reimbursement.

Develop site prioritization and closure procedures

Auditors recommended that the department's efforts to develop and implement better prioritization and closure procedures be continued. These procedures have been shared with remediation consultants and draft rules adopting the closure procedures are to be published for public comment this month. See a related story elsewhere in this issue.

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Audit recommendations made to DEQ - *continued from page 2*

Improve permitting and inspection processes

Auditors also recommended that efforts by the Environmental Services Section to streamline permitting continue. As a part of this effort you will see some additional rulemaking and adoption of additional forms. The electronic forms described in the fall, 2003, issue of MUST News are a part of the long-term effort to improve permitting processes. The auditors also recommended that the department conduct oversight inspections of licensed inspectors. As these oversight inspections occur, the department will use the information obtained to improve its inspector training and to improve its education and outreach efforts to owners and operators.

Fire Marshall Compliance

The department committed to investigate implementation of the auditors' recommendation to compile fire-safety compliance information in order to expedite eligibility processing timeframes. Implementation of this recommendation is limited by scope of applicable statutes and rules.

Strengthen corrective action procedures

Auditors recommended additional definition of corrective action task, standardizing of plan format, and streamlining

of procedures for cleanup activities with limited scope and impact. The department, with outreach to board staff, the PTRC Board, and remediation consultants, has been working to define tasks for most of the past year. The target for completing the first draft is February. Task definitions will be agenda items for consultant meetings in the coming months.

Adopt reasonable cost ceilings

As task definitions are complete, the auditors have recommended that they be used as the basis for the development of reasonable cost ceilings for various cleanup activities. The PTRC Board and department staff will be working with consultant and industry representatives to implement this recommendation.

If you have any questions about these recommendations and the department's implementation of these recommendations, you may contact Sandi Olsen, Division Administrator, at 406-841- 5001. ■

Petrofund Performance Audit

The Legislative Audit Committee requested a performance audit of the Petroleum Tank Release Compensation Fund (Petrofund) and regulation of underground storage tanks. The completed audit resulted in ten recommendations.

The recommendations focused on fund management and analysis, board membership, appeals documentation, staffing and their activity, cost ceilings compliance procedures, corrective action procedures and fund transitioning. Some of the audit recommendations were directed to the Petroleum Tank Release Compensation



Board, others to the Department of Environmental Quality, and a few to both the board and the department.

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Petrofund performance audit - continued from page 3

The board feels that the findings of the audit are generally accurate and identified those issues that need to be addressed by both the Petro Board and the DEQ.

The board has agreed to a more proactive approach to fund management and has hired an executive director to assist the board in fund administration, analyze fund liability projections, designating staff responsibilities, improving appeals documentation, analyzing fund activity, assessing exposure liabilities, assisting in determining long-term fund management strategies, and pursuing rule adoption to administer the program.

The board staff and DEQ are currently discussing the risk-based corrective action decision-making process, site-closure criteria, site-investigation/activity criteria, standard report formats, standard cleanup action plan requirements, and standard task categories in an effort to address compliance procedures, correction action procedures and cost ceilings.

The board now has its own staff and has designated fund-eligibility review and owner-operator notification to its staff. The department will provide the staff with notification of a statutory infringement that affects eligibility. At a recent board meeting, a committee was

established to review legislation to include a board member having environmental regulatory experience and make recommendations on fund legislation and regulation related to the mission of the fund.

The board believes that the Petrofund continues to serve Montana and its statutory goals. The direction of the fund may need to be revised and the board has agreed to conduct analysis of the fund, examine strategies and goals, study owner-operator needs and review private insurance options. The Legislative Audit Division will be making a copy of the audit available on its Web site: <http://leg.state.mt.us/css/audit/reports.asp>. ■



Meet Daniel Manson, PTRC Board Vice-Chair

One in a series of brief, get-acquainted profiles of PTRC Board members

Daniel Manson of Butte was named to the Petroleum Tank Release Compensation Board in 2002 to fill the position that the law requires to be an "attorney with experience in environmental law." He became vice-chair of the board last month. His term continues through June 2005.

Mr. Manson was listed among Montana attorneys in the 2000-2001 Pro Bono Honor Roll, a program in which lawyers assist Montanans of limited economic means with civil legal problems. The State Bar of Montana's Access to Justice Committee and the Montana Pro Bono Project promotes the program, which was established in 1994.

Born and raised in Anaconda, Mr. Manson earned a degree from Montana Tech in environmental engineering and a law degree from the University of Montana. Mr. Manson is a partner in the Butte law firm of Corette Pohlman & Kebe with a diverse practice, including environmental law.

Married to a native Montanan from Anaconda, the couple has three children ages seven, four, and two, and a fourth child expected in January. Parents of both Dan and his wife continue residence in historic Anaconda, a place where main street meets the mountains. ■

DEQ Sponsoring A Cathodic Protection Tester Course

Take advantage of a course that provides testing know-how from one of the industry's recognized experts



A certification program recognized and facilitated by the State of Montana Department of Environmental Quality (DEQ) for cathodic protection testers is being offered March 17 and 18, 2004. This course offers a practical approach for on-site testers who need to understand cathodic protection readings and will focus on the real-world needs of individuals and companies that conduct field-testing of cathodic protection systems.

Upon satisfactory test completion, this course will certify qualifying participants as cathodic protection (CP) testers of underground storage tanks. Also, participants will earn **16** continuing education credits toward fulfillment of their DEQ triennial licensing renewal requirements.

Course Outline - 8 hours of class time

Corrosion Basics – Learn about the natural phenomenon of corrosion.

How Cathodic Protection Works – Demonstrations will show how corrosion protection technology can use natural processes to protect structures such as underground storage tanks and piping.

Monitoring Cathodic Protection - Hands-on use of equipment to teach measurement methods such as structure-to-soil potential, and continuity testing.

Troubleshooting Techniques – There will be demonstrations as to how measurement techniques can impact test results and you will learn how to

conduct troubleshooting tests to help identify problems.

Regulatory Requirements – We will explain what the underground storage tank program expects with regard to corrosion protection testing and reporting.

Hands on Demonstration - Priority will be given to hands on classroom demonstrations to clearly show how corrosion protection testing is to be conducted.

8 Hours of Field Testing - Take classroom lessons and apply them in field. Plan on getting dirty. The class will go to two tank sites.

For Further Information Contact:

Dennis Burke, PE – NACE Certified Corrosion Specialist at 206.528.3848
or Redge R. Meierhenry, Solid and Hazardous Waste Specialist for DEQ at 406.444.1417.

State law changes on petroleum storage tank cleanup

House Bill 368, enacted by the 2003 Montana Legislature, was short titled "Revise petroleum tank release compensation board laws." The bill focused on changes in the law regarding petroleum storage tank cleanup in Montana.

All the changes are now in the Montana Code Annotated (MCA), specifically in Title 75, Chapter 11, Part 3. The legislation was sponsored by Rep. Ronald Devlin of Terry. It's an act extending the two-year time limit for submitting claims for reimbursement from the petroleum tank release cleanup fund; modifying the eligibility requirements; revising procedures for reimbursement of eligible costs; providing for third-party review of claims and plans; and revising the authority of the board. The bill amends sections 75-11-307, 75-11-308, 75-11-309, 75-11-313, and 75-11-318, MCA.

The limitation for expenses for work completed was increased from two years to five years from date of request for reimbursement (75-11-307(2)(h)). The running of the five-year limitation period can be suspended by an appeal of the eligibility determination and a reasonable extension is possible if the need is not due to negligence.

Eligibility was modified by removing department notification of the release and notification of tank existence from section 75-11-308 and replacing it with the release occurred from a UST which had a valid permit, a PST in compliance with applicable state and federal laws and rules, or an UST which the owner had no knowledge of (75-11-308(1)(a)).

Procedures for reimbursement of eligible costs were modified to place the responsibility on the Petroleum Tank Reimbursement Compensation Board staff (75-11-309(1)(f)). The board was designated to review each

claim and determine if claims are actual, reasonable, and necessary. Additional information may be requested from the department or owner/operator if needed. The department is to notify the board if they determine the owner/operator is failing to implement a cleanup action plan.

The petroleum tank release cleanup fund is administered as a revolving fund by the board and is statutorily appropriated. The fund management was modified to focus on payment of board expenses and pay only actual and necessary department expenses associated with administration (75-11-313(3)).

The Powers and Duties of the board were changed to allow the board to hire its own staff which was to be responsible for processing claims. In addition, the board was instructed to use the fund to pay for department expenses related to providing assistance to the board, actual and necessary administrative support, third-party review of cleanup action plans or claims, and board staff expenses (75-11-318(4)). ■



Hearing set March 2 on proposed changes in tank rules

The Montana Department of Environmental Quality has scheduled a public hearing in Helena to receive comments on proposed administrative rule changes relating to release reporting, investigation, confirmation and corrective action for tanks containing petroleum products or hazardous substances.

The hearing will be March 2 at 10 a.m. in Room 122 in the Remediation Division's new offices, 1100 North Last Chance Gulch in Helena, a building that previously housed the Montana National Guard headquarters and armory. The department will accept written comments on the proposed rules until 5 p.m. March 15. Written comments should be sent to Kirsten Bowers, Remediation Division, Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

Comments also may be sent via e-mail to: kbowers@state.mt.us

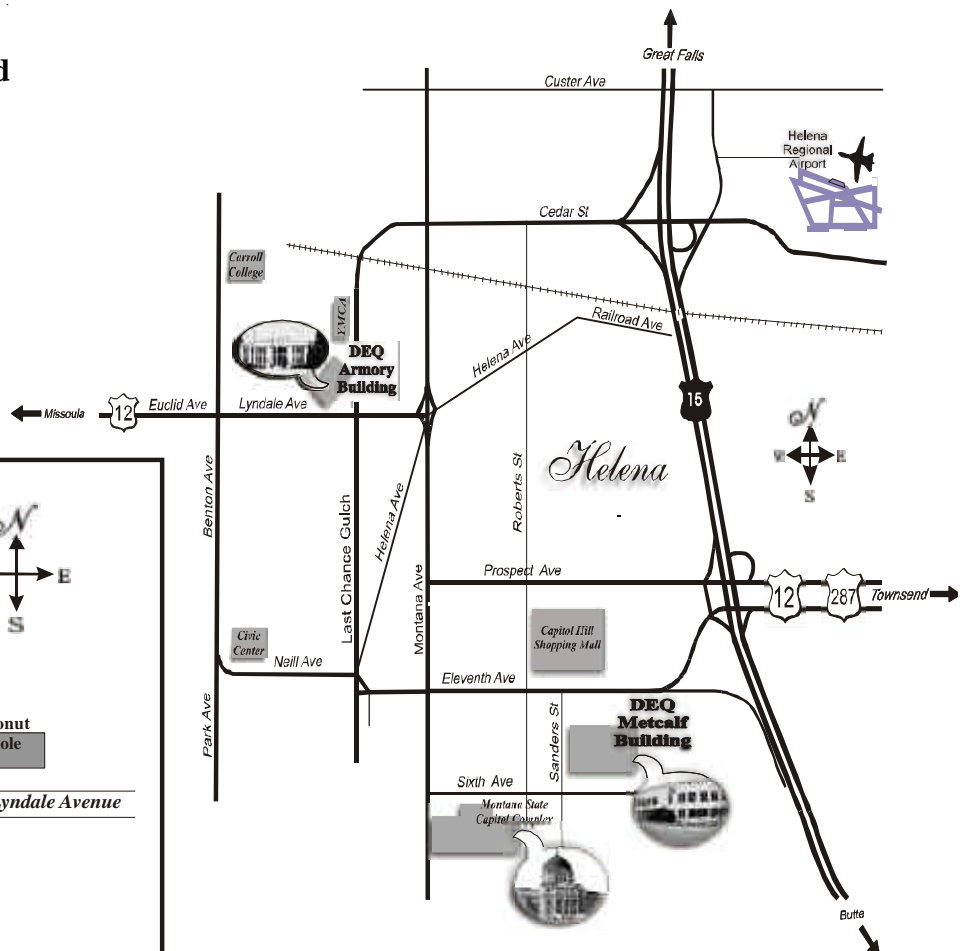
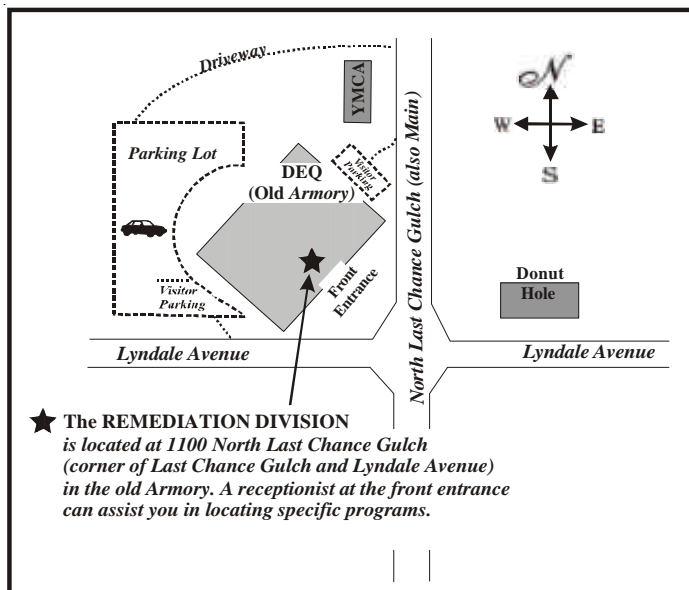
A significant change in the rule covering reporting of suspected releases includes one to ensure that the report is not simply left on a state telephone answering device but is made to an actual person within the DEQ or the Montana Disaster and Emergency Services Division.

Another proposed change in rules affects the timeframes for reporting confirmed releases. Two categories of confirmed releases are proposed for different reporting timeframes. Releases that must be reported within 24 hours are those that may present an immediate and growing threat to human health or the environment.

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BELOW - Map of newly relocated DEQ Remediation Division.

RIGHT - Map of Helena and two DEQ locations.



Hearing set March 2 on proposed changes in tank rules - *continued from page 7*

Releases that must be reported within seven days are those that are less likely to pose a significant threat to human health or the environment.

A proposed new rule categorizes releases as active, resolved, transferred, or non-compliant groundwater, and describes how the DEQ will assign and change these categories. All releases will be categorized as active unless they meet requirements for the resolved, transferred, or non-compliant groundwater category.

These are only a few examples of proposed rule changes. The complete text of the proposed rule changes will be

available on the DEQ Web site at: <http://www.deq.state.mt.us/dir/legal/hearing.asp> ■

